IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.W.P. No.13591 of 1993
Date of Decision:07.09.2007

Bhulla Singh and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Gurnam Singh, Advocate for the petitioners.

Mr. Arvind Mittal, Addl. AG, Punjab.

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The petitioners have approached this Court praying for quashing of instructions dated 27.9.1989 (Annexure P.9) clarifying that the Ex-servicemen who have already got benefit in recruitment against reserved vacancy, under Punjab Recruitment of Ex-servicemen Rules, 1982 (for short, `the Rules') in the Civil Departments, will not be eligible to the benefits for the second time in subsequent recruitments and further for the issuance of a writ of mandamus directing the respondents to appoint the petitioners as Inspectors of Police in terms of the recommendations made by Departmental Selection Committee on the basis of merit secured by them in the selection for the posts in direct recruitment.

Briefly, the facts as pleaded in the petition, are that petitioner No.1, after passing the matriculation examination, joined the Indian Air Force as Air Craftsman on 25.8.1973. While in service, he improved his qualifications by passing B.A and M.A examination from Punjab University. Thereafter, in 1985, he obtained L.LB Degree from Rohil Khand University, Bareilly. On 31.8.1988, he was discharged from the Air-Force Service in terms of the Rules applicable. At the time of discharge, he was in the rank of Sergeant. Petitioner No.2 joined as Air Craftsman in the Indian Air Force on 11.4.1972 who also retired as Sergeant after completion

of his tenure on 30.4.1992.

In pursuance to an advertisement for selection to the posts of Assistant Sub Inspector of Police in the year 1992, the petitioners applied for the same. On the basis of written test and interview, their names were recommended for the post of Assistant Sub Inspector of Police against 14% quota meant for Ex-servicemen. Accordingly, the petitioners were issued letter of appointment on which post they joined their duties on 26.9.1992 in the Office of Superintendent of Police, Ferozepur and Batala, respectively. After their selection as Assistant Sub Inspector of Police, they completed their requisite training at Punjab Police Training College, Phillaur on 30.10.1993.

In 1993, on direct recruitment basis, the respondents advertised posts of Inspector of Police. The eligible candidates were required to submit their application forms latest by 15.6.1993. The petitioners being eligible applied for the post against the seats meant for Ex-servicemen. The applications were sent through proper channel. It is further averred in the petition that though the number of posts were not mentioned in the advertisement, however, there were total 31 vacancies out of which 14% of the total seats, i.e., four seats were required to be reserved for the Ex-servicemen. After written test and interview, petitioners were at Sr.No.1 and 4 in the merit list . After the petitioners were ranked first and fourth in the merit list in the category of Ex-servicemen, vide letter dated 12.9.1993, the petitioners were directed to appear before the Assistant Inspector General of Police (Personnel), Punjab in connection with their recruitment as Inspector of Police. At the time of meeting, they are informed that they were not likely to be issued appointment letters on the basis of recommendations of the Departmental Selection Committee on the ground that they being Ex-servicemen could not avail of reserved quota meant for Ex-servicemen second time as they had already been appointed as Assistant Sub Inspector of Police taking the benefit of reservation as Ex-servicemen. To defeat the claim of the petitioners, the instructions were issued by the respondents on 27.9.1989 (Annexure P.9), were referred to. It is these instructions which are impugned in the present petition.

In reply filed to the petition, the stand is that in terms of the Rules, only that person can claim benefit of reservation of Ex-servicemen

quota who is not already in service and further that such a benefit of reservation can be claimed in any recruitment against the reserved vacancy only once in the lifetime whereas the petitioners had already availed the benefit of reservation for selection as Assistant Sub Inspectors of Police and in terms of the rules and clarifications, the petitioners are not eligible to avail the benefit of reservation second time.

Heard Shri Gurnam Singh, counsel for the petitioners and Shri Arvind Mittal, learned Additional Advocate General, Punjab and perused the paper book with their assistance.

Reiterating the submissions already made in the writ petition, learned counsel for the petitioners vehemently argued that the impugned instructions/ clarification issued by the respondents is totally contrary to the spirit of the Rules which are being misinterpreted by the respondents. The text of the clarification is extracted below:-

> "2. The Exservicemen who have already got benefit in recruitment against reserved vacancy under Punjab Recruitment of Ex-Servicemen Rules, 1982 in Civil departments is not eligible to the benefits for the second time and in subsequent recruitments. It is further added that this policy of Punjab Government still continues to be operative."

A perusal of the above clarification shows that the reliance is primarily on the Rules. To appreciate as to whether the clarification issued is in conformity with the spirit of the Rules, the reference to the relevant Rules would be required. Rule 4 of the Rules, which is relevant for the purpose of reservation of vacancies is extracted below:-

> "Rule 4.
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> Reservation of vacancies- (1) Subject to the provision of rule 3, 14% of vacancies to be filled in by direct appointment in all the State Civil Services and posts connected with the affairs of the State of Punjab shall be reserved for being filled in by recruitment of Ex-servicemen.
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> Provided that where an ex-Servicemen is not available for recruitmenmt against a reserved vacancy, such a vacancy shall be reserved to be filled in by recruitment of the wife or

one dependent child of an Ex-servicemen, who has neither been recruited against a reserved vacancy under these rules;

Provided further that the wife or the dependent child of the Ex-servicemen shall be recruited against the reserved vacancy subject to the conditions that-

(i) he or she possesses the prescribed qualifications and is within the prescribed age limits;

(ii) He or she is not already in service;

(iii) He or she will be eligible to avail the benefit of recruitment against the reserved vacancy only once in life";

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PROVIDED that the reserved vacancies filled in shall be carried forward for the subsequent occasions (arising during at least 2 years in each of which such occasion arises for recruitment) whereafter the vacancy in question shall be treated as un-reserved."

He submits that the Rules only debar the wife or the dependent children of the Ex-servicemen from claiming the benefit of reservation for the second time and there is no such bar with regard to the Ex-servicemen themselves. He relied upon judgments of this Court in **Raj Kumar Verma v. The State of Haryana,** 1981(3) SLR 436, **Bhagat Ram v. The State of Punjab and others,** 1993(4) SLR 724 and **Harbhajan Singh v. The State of Punjab and another,** 1977(2) SLR 180 whereas on the other hand the stand of the respondents is that the object of the Rules is to provide opportunities of employment to the Ex-servicemen who had served the country after their discharge from active service as the discharge in the Armed Forces is sometimes at an age earlier than the normal age of superannuation. In case the same person is permitted to take benefit of reservation time and again, the other persons in que who have not availed all the benefits even once will certainly be prejudiced.

Having heard learned counsel for the parties and perusing the rules and the judgments of this Court cited by the petitioners, I find merit in the contention raised by counsel for the petitioners.

In **Harbhajan Singh's case (supra)**, a Full Bench of five

Hon'ble Judges of this Court while dealing with similar Rules observed as under:-

> "In the view that we have taken, it is unnecessary for us to go into the question of the vires of Rule 3(iii)(cc)(ii)(b). We would, however, like to add that the rule does appear to our mind to be unreasonable. These rules prescribing a quota of reservation for released Armed Forces Personnel are in force for a limited period only. If during that period a person is otherwise eligible for appointment, we see no justice in excluding him from appointment on the ground that he accepted some other employment in the meanwhile. It looks as if a person belonging to the category of released Armed Forces Personnel accepts an inferior post he does so on pain of losing eligibility to a superior post. If no superior post is readily available "immediately on his release from the Armed Forces he must wait till such post become available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us."

In **Raj Kumar Verma's case (supra),** a Division Bench of this Court relying upon the Full Bench judgment of this Court in **Harbahajan Singh's case (supra)** struck down Rule 4-A of the Punjab Government, National Emergency (Concession) Haryana Amendment Rules, 1979 which was limiting war service benefit to only on first appointment under the Government. The relevant observation of the Division Bench as recorded in para 8 of the judgment is as under:-

> "The learned counsel for the petitioners have argued that Rule 4-A introduced by the Punjab Government National Emergency (Concession) Haryana Ist Amendment Rules, 1979 into the Punjab Government National Emergency (Concession) Rules, 1965, is violative of Articles 14 and 16 of the Constitution of India. They have argued that all the Ex-Emergency Officers from one class. The joined the military service during emergency in response to a call given by the

Nation. After the danger of National Aggression receded, they were released from the military in a phased programme. They all fall in the same category. The all served the Nation. They had joined the service on the inducement given by the different authorities. The rules were framed to provide concessions and benefits to these officers and men, who had served the nation, in the hour of need, though they were not interested in soldiery as a profession. If some of them after release had to accept some inferior jobs, they cannot be forced to stick to these jobs for all times to come, simply if some persons out of this class happened to join Civil posts they did not come to form a different class. They still remained Ex-Emergency Officers. There is no reasonable basis for treating them as a different class than the other Ex-Emergency Officers, who did not or could not join civil service. There is no intelligible differentia to form a classification. Furthermore, the object of the rules was to rehabilitate and to provide for the welfare of the Ex-Emergency Officers and other servicemen. This classification does not advance the object. It has no relationship with the object to be achieved. The classification rather defeats the object because it deprives a chunk of the same class of the benefits available to the other comparables. Clearly, there is no nexus between the classification and the object to be achieved. Rule 3(iii)(cc)(ii)(b) of the Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Punjab Civil Service (Judicial Branch) (First Amendment) Rules, 1976, is similar to Rule 4-A and is in the following terms:-

> "Released Indian Armed Forces Personnel means.....
> but does not include, Indian Armed Forces Personnel who before their appointment against vacancies reserved under these rules..... joined or join a Civil Service of the Union or a Civil Service of a State or a Civil Post under the Union or a State after their release from the Armed Forces of the Union.
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> xx xx xx xx"

In **Bhagat Ram's case (supra)**, issue under consideration before the Court was exactly under the identical facts and circumstances wherein this Court accepted the claim made by the petitioner therein in the following terms:-

> "Learned counsel for the petitioner has relied upon a letter dated 8.2.1988, Annexure P-2 from the Directorate of Sainik Welfare, Punjab to the Secretary, Punjab State Electricity Board, Patiala with a copy of the Chairman, Punjab Public Service Commission, Patiala that the Ex-servicemen of Punjab State who have already availed of the benefit of reservation in the first instance in any Department/Board/ Corporation/Bank of the Punjab Government can avail of the benefit of reservation against Ex-servicemen category for the direct recruitment second time. State Government has not given any reply regarding this Annexure. Any way I am not taking this letter to be executive instructions of the State Government as it emanates from the Directorate of Sainik Welfare, Punjab. However, a Division Bench of this Court in Raj Kumar Verma, H.C.S. Vs. The State of Haryana, 1981(3) S.L.R. 436 struck down Rule 4-A of the Punjab Government, National Emergency (Concession) Haryana Amendment Rules, 1979 which limited War Service benefit only to first appointment under the Government. I do not consider that the State Government is justified in not giving benefit of reservation to an Ex-serviceman, who might have availed the benefit of reservation at any earlier time, Take for example that after a person is discharged from military service, no post is advertised for which he may be qualified to apply against the reserved post for Ex-serviceman. A post which is lower in status than for what that particular Ex-serviceman is qualified is advertised and the person takes the benefit of reservation and after sometime some posts for which he is really qualified are advertised, wherein certain posts are reserved for Ex-servicemen. Can it be said that since earlier a person has already taken the benefit of reservations of post for ex-

serviceman, he is to be denied the same benefit for the post for which he is really qualified? To my mind, the answer has to be in the negative. To make both ends meet, a person may apply for a post which is lower than the one for which he is really qualified. But that would not mean that for the post for which he holds the qualifications, he cannot take the benefit of reservations on the ground that such benefit of reservation had already been taken by him.

From what has been observed above, it is obvious that the petitioner was entitled to be considered against the post of Inspector of Police against the reserved post for Ex-serviceman. The respondents could not deny him the benefit of reservation simply because he had already taken that benefit of reservation, while being appointed as an Assistant Sub Inspector."

No judgment taking a view contrary to what has been taken in the above referred judgments has been cited by learned counsel appearing for the respondents. On a bare perusal of Rule 4 of the Rules, where the reservation for the Ex-servicemen is provided, it is evident that in condition of entitlement for reservation, there is no such condition that an Ex-serviceman can avail of the benefit of reservation only once in his lifetime against the direct recruitment. It is only in case of wife or the dependent children of the Ex-servicemen, that while providing for reservation to them, the conditions are put in terms that he or she is not already in service and that he or she will be eligible to avail the benefit of recruitment against the reserved vacancy only once in lifetime. These two conditions are nowhere in the case of the Ex-servicemen in case they are themselves applicants and seeking claim to the posts. After the discharge from Armed Forces in case an Ex-serviceman takes a job which according to him may not be in terms of his status and qualifications, with a view to make his both ends to meet, such an Ex-servicemen cannot possibly be debarred from applying on a newly advertised post which may be higher in status and rank and for which he is fully qualified. Such an interpretation sought to be made by the respondents to the Rules, is neither borne out from the language of the Rules nor the same has any nexus with the object to be achieved.

Accordingly, for the reasons recorded above and applying the

dictum of law laid down by this Court consistently in the aforementioned cases, the writ petition is allowed. As in terms of the interim order passed by this Court, the petitioners had already been given appointment and they had joined as Inspectors of Police already, their appointment shall be treated as regular from the date of their initial appointments.

The writ petition is disposed of in the manner indicated above with no order as to costs.

September 07, 2007 **(RAJESH BINDAL)**
renu **JUDGE**

(Refer to Reporter)